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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

HAMID HAGHIGHAT,

Plaintiff and Appellant,

v.

HOOTAN DANESHMAND,

Defendant and Respondent.

G056308

(Super. Ct. No. 30-2011-00511037)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Geoffrey T. Glass, Judge. Affirmed.

Law Offices of Michael Leight and Michael Leight for Plaintiff and Appellant.

Russo & Duckworth and J. Scott Russo for Defendant and Respondent.

\* \* \*

Hamid Haghighat entered into a business transaction with his cousin Hootan Daneshmand involving the purchase of land and construction of a medical building on the property. Eventually the business relationship soured and Haghighat sued Daneshmand for breach of contract, breach of fiduciary duty, fraudulent concealment, declaratory relief, and an accounting, among other claims. Following a bench trial, the court rendered judgment for Daneshmand on all counts.

Haghighat appeals from the judgment, contending the trial court's findings lack sufficient evidentiary support. Haghighat also argues various procedural errors in regard to the court's statement of decision require reversal of the judgment. We are not persuaded by Haghighat's contentions and therefore affirm the judgment.

## I

### BACKGROUND

#### *A. The Business Deal*

Haghighat and Daneshmand were first cousins, close friends, and prior business partners when they entered into a new business venture in March 2004. Daneshmand was a surgeon who wanted to buy property for construction of a medical building with an onsite surgical center where he could locate his practice. Daneshmand proposed Haghighat loan money to Daneshmand's limited liability company (an LLC) to purchase the land and build the medical building. Daneshmand owned 98 percent of the LLC named Foothill Medical Facility, LLC (FMF), and his then-wife owned 2 percent.

Haghighat agreed to invest in the venture and lent FMF the initial sum of \$700,000 toward the purchase price of the land. Daneshmand agreed to contribute the balance. On March 4, 2004, Daneshmand gave Haghighat a promissory note for \$700,000, bearing a 6 percent annual interest rate, with the principal payable in full on December 7, 2005. The loan was unsecured, but guaranteed by FMF.

Haghighat later invested another \$800,000 in the project. Daneshmand obtained a \$4.9 million construction loan and permanent financing from Bank of America (the Bank of America loan), which Daneshmand personally guaranteed. After the \$700,000 promissory note came due, the parties reached an oral agreement on the terms of Haghighat's now \$1.5 million investment. That new agreement, though never documented, superseded and replaced the promissory note. The parties agreed Haghighat would receive a guaranteed monthly payment from FMF of \$8,000 as consideration for the \$1.5 million investment.

Haghighat, Daneshmand, and their real estate broker, John Bral, decided the \$8,000 monthly payment would be a reasonable return on Haghighat's investment based on a three-step calculus. They first calculated the total cost of the project, exclusive of the tenant improvements for the surgery center, at \$7,146,696, and then determined Haghighat's \$1.5 million contribution covered 25 percent of the total cost. Finally, they agreed 25 percent of the net rents for the building, if fully leased, excluding the added premium for the surgery center improvements and the Bank of America mortgage payments, was \$8,000 per month.

In late 2009, Haghighat wanted to change his relationship with FMF from lender to LLC member. Daneshmand agreed and amended the LLC operating agreement to reflect Haghighat as a "member" with 25 percent ownership, and Daneshmand as having a 75 percent ownership interest. Haghighat, however, never signed the operating agreement. Becoming a member of FMF would require Haghighat to be a guarantor of the Bank of America loan, something Haghighat had resisted from the earliest days of the venture. Haghighat did not want to guarantee the loan or to be subject to cash calls for FMF's operating expenses or taxes. Haghighat continued receiving the guaranteed \$8,000 monthly payments until April 2011.

#### *B. The Dispute*

In 2011, a dispute arose between Daneshmand and Haghighat regarding the guaranteed monthly payments of \$8,000. Daneshmand told Haghighat FMF could not continue making the payments because rents were insufficient in light of expenses; Haghighat did not believe Daneshmand.

In September 2011, Haghighat sued Daneshmand for an accounting, promissory fraud, fraudulent concealment, breach of oral contract, unjust enrichment, negligent nondisclosure by a fiduciary, declaratory relief, constructive trust, and dissolution of FMF. In December 2011, the trial court sustained with leave to amend the claims for promissory fraud, constructive trust, and dissolution of FMF. Haghighat did not amend the complaint; FMF was dismissed from the action because the only claim against it was for dissolution.

### *C. The Trial, Statement of Decision, and Judgment*

The parties tried the case to the court in December 2017. There were essentially two key disputes. The first concerned the relationship of the parties. Haghighat asserted he was a member of FMF and as such was owed fiduciary duties by Daneshmand, FMF's managing member, which duties Daneshmand breached. Most of Haghighat's claims against Daneshmand at trial (for an accounting, for damages for fraudulent concealment and negligent nondisclosure) flowed from this alleged fiduciary relationship. For his part, Daneshmand contended Haghighat was merely a creditor of FMF who had loaned the LLC \$1.5 million, and Daneshmand owed Haghighat no fiduciary duties.

The second dispute concerned Haghighat's claim Daneshmand had secretly received \$2.2 million from FMF in 2006 and 2008. Haghighat based his claim solely on what proved to be erroneous entries in FMF's tax returns for 2006 and 2008. Haghighat contended Daneshmand could not dispute these entries because he signed the returns under penalty of perjury.

Daneshmand presented evidence through witnesses and documents disputing he received the claimed \$2.2 million distribution from FMF.

The trial court's statement of decision addressed the key disputed issue of the relationship between the parties, observing: "The legal relationship between the parties is murky and has changed over time." After reviewing various possible types of relationships, the statement of decision concluded Haghghat was merely a creditor of FMF, based upon an oral agreement to invest \$1,500,000. "The court finds that the evidence proves, more likely than not, that the relationship was, at the relevant times, an oral loan agreement between Foothill Medical Facility, LLC, and Mr. Haghghat, with Foothill Medical Facility, LLC, to repay the loan from 25 [percent] of the rental income, net of ordinary burden and without regard to the mortgage on the property." As for the terms of that loan, the trial court found Haghghat agreed to loan FMF \$1.5 million with no due date and no "set interest rate," the consideration for which was a guaranteed monthly payment of \$8,000.<sup>1</sup>

The statement of decision specifically rejected Haghghat's claim he was a member of FMF. Among the reasons the court offered for that ruling was Haghghat's refusal to sign the operating agreement, guarantee the Bank of America loan, or otherwise bear responsibilities for FMF's liabilities and losses.

As to Haghghat's duty-based claims against Daneshmand, the trial court concluded none had merit. "Haghghat was simply an unsecured creditor of the LLC. He has no enforceable rights against [] Daneshmand."

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<sup>1</sup> The trial court further found the parties agreed FMF "would repay the principal of the loan upon the sale of the building. Upon sale, Mr. Haghghat would get one quarter of: the sales price minus the expenses of the sale minus \$1,000,000 (for the agreed value of the surgery center improvements) minus the secured mortgage."

Finally, regarding Haghighat’s claim Daneshmand concealed his wrongful receipt of \$2.2 million from FMF, the trial court found Daneshmand never received the funds.

Haghighat filed objections to the statement of decision, and Daneshmand filed responses to those objections, and a proposed judgment.

On April 3, 2018, the trial court entered judgment in Daneshmand’s favor on all counts. The judgment specifically incorporated by reference the findings and conclusions in the statement of decision.

## II

### DISCUSSION

#### A. *Standard of Review*

“On appeal, we presume the judgment is correct. . . . ‘[I]n reviewing a judgment based upon a statement of decision following a bench trial, “any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision. [Citations.]” [Citation.] In a substantial evidence challenge to a judgment, [we] “consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the [findings]. [Citations.]” [Citation.] We may not reweigh the evidence and are bound by the trial court’s credibility determinations. [Citations.] Moreover, findings of fact are liberally construed to support the judgment.’ [Citation.]” (*In re Marriage of Ciprari* (2019) 32 Cal.App.5th 83, 93-94.)

#### B. *Substantial Evidence Supports the Finding Haghighat Was a Lender of FMF*

Haghighat challenges the trial court’s finding his relationship to FMF was that of a lender and not a member. He argues the court got it wrong because the evidence “is overwhelming and uncontradicted” that he “is a 25 [percent] owner of the LLC.” Haghighat’s argument recites plenty of evidence supporting his position, but in a striking omission, fails to cite *any* of the evidence supporting the trial court’s finding.

Accordingly, he forfeits his right to challenge the sufficiency of the evidence that he was merely a lender to FMF. “An appellant . . . who cites and discusses only evidence in her favor fails to demonstrate any error and waives the contention that the evidence is insufficient to support the judgment. [Citations.]” (*Rayii v. Gatica* (2013) 218 Cal.App.4th 1402, 1408.)

Even if Haghighat had not forfeited his evidentiary challenge to the finding he was a creditor of FMF, he would lose on the merits. We note here just a part of the evidence supporting the trial court’s finding. First, Haghighat refused to sign the operating agreement, thereby evidencing his desire to remain a lender contractually entitled to receive a guaranteed monthly payment of \$8,000 from FMF. Had he signed the operating agreement, its terms would have interfered with his right to those payments.<sup>2</sup> Moreover, had Haghighat signed the operating agreement, his membership in FMF would have required him to bear a proportionate share of FMF’s liabilities, something he indisputably refused to do.<sup>3</sup>

The second piece of evidence supporting the finding Haghighat was a lender of FMF came from his divorce proceedings. In those proceedings Haghighat testified he had *loaned* \$700,000 to FMF and the \$8,000 payment he received every month from FMF was interest on a loan, not profits. Finally, Haghighat’s tax filings from the beginning of the venture through 2008 support the finding his investment in FMF was

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<sup>2</sup> Section 3.04(a) of the operating agreement provides in pertinent part that “[n]o interest may be paid on any Capital Contribution.” Additionally, section 21.02 provides: “For any calendar quarter, available cash need not be distributed to the extent that the cash is required for a reasonable working capital reserve for the Company[.]”

<sup>3</sup> Section 3.04(c) of the operating agreement provides in pertinent part as follows: “No Member may receive out of Company property any part of his, her, or its capital contribution until (1) all liabilities of the Company . . . have been paid . . . .”

Additionally, section 21.01 provides: “[T]he net income, net loss, or capital gains of the Company for each fiscal year of the Company is allocated to the Members, pro rata in accordance with their percentage interests.”

a loan. For each of those years, FMF gave Haghighat a 1099 tax form showing the \$8,000 monthly payments as interest payments, and that is how Haghighat characterized those funds in his own tax returns.

We conclude substantial evidence supports the trial court's finding Haghighat was a lender of FMF. Because Haghighat was not a member of FMF, its managing member Daneshmand owed him no fiduciary duties. Consequently, all of Haghighat's appellate claims against Daneshmand based on the existence of a fiduciary duty fail.

*C. Substantial Evidence Supports the Finding Daneshmand Did Not Receive \$2.2 Million from FMF*

Haghighat also challenges the sufficiency of the evidence to support the trial court's finding Daneshmand did not receive \$2.2 million from FMF. At trial, Haghighat sought to prove Daneshmand fraudulently concealed his receipt of that large sum based entirely on FMF's tax returns for 2006 and 2008. The court found the evidence proved otherwise. Substantial evidence supports that finding.

Certified public accountant James Howard, who prepared both tax returns for FMF, testified on Daneshmand's behalf. As for the purported distribution of \$1,254,572 to Daneshmand in 2006, Howard explained he erroneously had entered that sum as a "cash distribution" on Schedule L of FMF's 2006 tax return. Howard testified the \$1,254,572 reflected an accounting adjustment to reduce Daneshmand's capital account balance so that assets would equal liabilities; Daneshmand did not receive any distribution. Howard further testified the error had no impact on FMF's finances.

Howard's testimony was supported by that of forensic accountant Aslan Abregov, Daneshmand's expert. Abregov reviewed all of FMF's tax returns and account statements from 2006 and confirmed there was no distribution to Daneshmand. The \$1,254,572 entry was just an adjustment entered on the wrong line of the 2006 tax return.



Howard also disputed Haghighat's contention that FMF's 2008 tax return proved Daneshmand had received a distribution of \$947,107 in 2008. Howard testified he erroneously reported the \$947,109.89 sum on the tax form as a draw; in fact, all but \$150,000 of that amount consisted of transfers among bank accounts and was kept within the company. Howard explained that during the 2008 financial crisis, FMF had \$800,000 on deposit at Bank of America uninsured. Daneshmand's personal banker at Bank of America advised him to move the money to multiple insured accounts, which he did. While in these various insured accounts, the money accrued over \$43,000 in earnings; all of that money was later transferred back into the FMF account.

Additionally, expert Abregov traced the money making up the \$947,109.89 entry in the 2008 tax return and confirmed it all returned back into the FMF accounts, excepting \$150,000 which was a distribution.

Haghighat argues Daneshmand was estopped from denying he received the \$2.2 million distribution reflected on the 2006 and 2008 tax returns because he signed the forms under penalty of perjury. Haghighat is wrong. As the trial court noted in the statement of decision, "[T]he accountant's misattribution is not an admission by [] Daneshmand, even though [] Daneshmand attested, to the best of his knowledge, to the correctness and completeness of the return, under penalty of perjury. . . . Daneshmand has the right, in this trial, to rely on the tax preparer for accounting decisions."

We conclude substantial evidence supports the trial court's finding Daneshmand did not receive the \$2.2 million distribution claimed by Haghighat.

#### *D. No Procedural Errors Require Reversal*

Finally, we find no merit in Haghighat's arguments the trial court committed various procedural errors requiring reversal of the judgment.

First, Haghighat contends the trial court committed reversible error in reaching the conclusion he is *not* a 25 percent owner of FMF because that "was not a principal controverted issue"; instead, he contends, the testimony of both parties in the

case “was unequivocal that [Haghighat] became a member (owner) of FMF[.]” Haghighat is simply wrong in contending his status vis-à-vis FMF was not a principal controverted issue at trial. Whether he was a member or lender of FMF was the key disputed issue which determined the viability of all his claims based on fiduciary duty. (See Daneshmand’s trial brief, p. 5: “Haghighat now falsely alleges . . . [h]e has been a 25 [percent] member of FMF starting in 2004 so as manager Daneshmand has owed him a fiduciary duty.”)

Haghighat also faults the trial court for failing to issue a tentative decision, failing to rule on his objections to the statement of decision, and failing to hold a hearing as he requested on his objections to the statement of decision (Cal. Rules of Court, rule 3.1590.) ) These arguments fail for the simple reason Haghighat makes no showing that any of these purported procedural errors caused him prejudice. (*Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1069 [appellant has burden of proving prejudicial error]; *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 308-310.)

### III

#### DISPOSITION

The judgment is affirmed. Respondent is entitled to his costs on appeal.

ARONSON, J.

WE CONCUR:

MOORE, ACTING P. J.

IKOLA, J.